

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

In re Complaint of ADRIAN AVENA, as
Owner, and AA COMMERCIAL, LLC, as
Owner *Pro Hac Vice*, of the Fishing Vessel
CONCH'RD, for Exoneration from or
Limitation of Liability

Civil Action
No. 1:21-515-KMW-EAP

ORDER

This matter having come before the Court by way of the United States of America's (the "United States") Motion to Dismiss all of the claims and crossclaims asserted against it in this action for Lack of Subject Matter Jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1),¹ and for Judgment on the Pleadings as to the same pursuant to Fed. R. Civ. P. 12(c) (ECF No. 58), the Opposition thereto filed by AA Commercial, LLC and Adrian Avena ("Petitioners") (ECF. 63) and Kimberly Wolfe ("Third-Party Plaintiff") (ECF Nos. 64, 65), and the United States' Reply (ECF No. 66); and the Court having read the submissions and heard the arguments of counsel during oral argument on the Motion held on November 2, 2022; and for the reasons set forth on the record;

IT IS this 4th day of **November 2022**, hereby **ORDERED** that the United States' Motion (ECF No. 58) is **GRANTED**; and it is further

¹ The United States styled its Motion as one to dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(h)(3). However, and as the Court explained during oral arguments, where such motions are predicated on the federal government's assertion of sovereign immunity, they are more properly analyzed under Fed. R. Civ. P. 12(b)(1). See *CNA v. United States*, 535 F.3d 132 (3d Cir. 2006).

ORDERED that all claims and crossclaims asserted against the United States in this matter are hereby **DISMISSED WITH PREJUDICE** for lack of subject matter jurisdiction; and it is further

ORDERED that, due to the dismissal of the United States from this action, the Motion of Third-Party Plaintiff for Leave to File a Second Amended Third-Party Complaint (ECF No. 84) is hereby rendered **MOOT**; and it is further

ORDERED that Third-Party Plaintiff is hereby **GRANTED** leave to file a Motion to File an Amended Third-Party Complaint within thirty (30) days from the entry of this Order.

/s/ Karen M. Williams
KAREN M. WILLIAMS
United States District Judge

cc: Hon. Elizabeth A. Pascal, U.S.M.J.